IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

Crl.MC.No. 519 of 2007()

CP.30/2006 of THE J.F.C.M, KOTHAMANGALAM

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PETITIONER: ACCUSED

SANTHOSH, AGED 26 YEARS,
S/O.MANI, PUTHENPURACKAL HOUSE,
KUTTAMPUZHA VILLAGE.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS: RESPONDENT/COMPLAINANT & STATE

STATE OF KERALA REP. BY SUB INSPECTOR OF POLICE,
KUTTAMPUZHA POLICE STATION,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.519 of 2007

Dated this the 27th day of February, 2007

O R D E R

The petitioner has come to this Court with a slightly strange request. According to him he has nothing to do with Crime No.36 of 2004 of Kuttampuzha Police Station or proceedings initiated as C.P.No.30 of 2006 on the basis of a final report submitted by the police in that crime. He is Santhosh, S/o.Mani of Puthenpurackal House, Kuttampuzha Village. Though he is not involved in any crime, he found the police officials coming to him to effect service of Annexure-A1 summons. Annexure-A1 summons is addressed to one Kuttayi. The person arrayed as accused in that crime is one Kuttayi, S/o.Mani Achan of Puthenpurackal Veedu of Kuttampuzha Village. It is the petitioner's contention that he is not the one named in the final report produced as Annexure-A4. He does not have a name as Kuttayi. He is Santhosh. His father's name is Mani and not Mani Achan. The address shown in the final report admittedly does tally with the address of the petitioner. It is in these circumstances that the petitioner has come to this Court complaining about the improper service of Annexure-A1 summons on the petitioner. The petitioner is in a catch twenty two situation. He is not the accused named in the summons. But it has

now been served on him. The petitioner apprehends that if he appears before the learned Magistrate and applies for bail, he may be remanded to custody without and before resolving the question whether he is the real person arrayed as accused in the final report or not.

2. The situation is extraordinary and does call for issue of appropriate direction under Section 482 Cr.P.C.

3. Accordingly, the following directions are issued.

i) The petitioner on whom Annexure-A1 summons was served shall appear before the learned Magistrate having jurisdiction on the next date of posting.

ii) He shall be at liberty to urge before the learned Magistrate that he is not the person named in the summons. The learned Magistrate shall consider the same after giving notice to the respondent.

iii) Only after the identity of the person arrayed as the accused in Annexure-A4 final report is confirmed to be that of the petitioner, shall the petitioner be obliged to apply for bail. Needless to say that such an application for bail will have to be considered by the learned Magistrate on merits, in accordance with law and expeditiously - on the date of the presentation itself.

4. This Crl.M.C is allowed - to the above extent.

(R.BASANT, JUDGE)

rtr/-